

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

STATE OF TEXAS; STATE OF
LOUISIANA,

Plaintiffs,

v.

The UNITED STATES OF AMERICA, et al.;

Defendants.

Civ. Action No. 6:21-cv-00016

JOINT ADVISORY

Plaintiffs and Defendants jointly submit this advisory to address the Court's questions during the hearing on August 23, 2021.

First, Defendants will serve Plaintiffs the administrative record by Wednesday, September 8, 2021. Defendants will also file the index of the administrative record on the public record by September 8, 2021.¹

Second, the parties agree that the deadline for Defendants' responsive pleading be extended until October 20, 2021. Defendants do not concede that this Court has jurisdiction, but agree that they will not rely on the fact that they have not yet responded to the Complaint to defer any of the case management issues otherwise discussed in this filing. Rather, Defendants will address questions of jurisdiction in the context of those other matters, including whether discovery is appropriate. To the extent circumstances change, Defendants will address those new circumstances in a separate filing.

Third, the parties disagree about whether discovery is appropriate in this case. Defendants believe that the "record rule" forecloses discovery. Plaintiffs believe that the record rule does not foreclose all discovery. (Defendants contend that discovery is appropriate to assess Plaintiffs' claim to standing but are willing to forego such discovery if the Court agrees to limit the record to the administrative record; otherwise, to the extent the Court orders any discovery, Defendants reserve the right to seek reciprocal discovery, including on questions of standing.) To aid the Court in resolving this dispute, the parties plan to proceed as follows:

¹ Because the administrative record totals thousands of pages, including slip-sheets for withheld privileged information, Defendants are not in a position to file the entire administrative record on the public record. Rather, Defendants propose that the parties proceed consistent with the Local Rule 7(n)(2) of the District of the District of Columbia in which the parties, among other things, file an appendix of relied upon material from the administrative record within 14 days of the last memorandum on the subject dispositive motion. Plaintiffs believe that the Court would benefit from having access to the entire administrative record and propose that it be filed with the Court.

- Plaintiffs file a motion with the Court within seven days of the administrative record being submitted to them;
- Defendants respond within seven days of Plaintiffs' motion being filed; and
- Plaintiffs reply within seven days of Defendants' response being filed.
- The Court will schedule a hearing, if it deems one is necessary, at its earliest convenience following receipt of Plaintiffs' reply.

Fourth, the parties have not reached agreement on a schedule but believe that they will be able to make more progress on that issue after the Court has ruled on the propriety of discovery. The parties propose filing a joint scheduling report within 14 days of the Court's ruling on the propriety of discovery.

Fifth, regarding the location for a trial, Plaintiffs would be happy with any of the locations that the Court proposed. Plaintiffs prefer to appear in-person but understand that some witnesses or opposing counsel may need to appear by video-conference. Defendants do not believe a trial or an evidentiary hearing is warranted and that such questions would be best addressed, if necessary, following this Court's ruling on the propriety of discovery. Further, Defendants believe that to the extent a trial is to proceed, its location and whether it should be held in person should be determined in light of the circumstances closer to the time of any such trial.

Sixth, the parties' positions on Defendants' reporting requirements are discussed in a separate filing.

Date: September 1, 2021

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on September 1, 2021, which automatically serves all counsel of record who are registered to receive notices in this case.

/s/ Patrick K. Sweeten
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